

# SENATE BILL 791

P2

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By: **Senator Garagiola**

Introduced and read first time: February 10, 2010

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Multi-Year Contracts for Renewable Energy – Termination**  
3 **Clauses**

4 FOR the purpose of authorizing the Board of Public Works, on the recommendation of  
5 the Secretary of General Services, to waive a certain requirement to include a  
6 certain termination clause in certain multi-year contracts for the procurement  
7 of energy generated from certain renewable sources; requiring the Board to  
8 consider a certain factor in determining whether to grant a certain waiver; and  
9 generally relating to the terms of multi-year procurement contracts.

10 BY repealing and reenacting, with amendments,  
11 Article – State Finance and Procurement  
12 Section 13–217  
13 Annotated Code of Maryland  
14 (2009 Replacement Volume)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – State Finance and Procurement**

18 13–217.

19 (a) In this section, “multi-year contract” means a procurement contract that  
20 requires appropriations for more than 1 fiscal year.

21 (b) (1) A unit may enter into a multi-year contract subject to:

22 (i) standards established by the Board; and

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) regulations adopted by the primary procurement unit that is  
2 responsible for the type of procurement involved.

3 (2) A multi-year contract shall be subject to review and approval by  
4 that primary procurement unit.

5 (c) A multi-year contract may not be approved unless each unit reviewing  
6 the multi-year contract determines that:

7 (1) the estimated requirements of the State:

8 (i) cover the period of the multi-year contract;

9 (ii) are reasonably firm; and

10 (iii) are continuing; and

11 (2) the multi-year contract will serve the best interests of the State by  
12 encouraging effective competition or otherwise promoting economy in State  
13 procurement.

14 (d) (1) If money sufficient for the continued performance of a multi-year  
15 contract is not appropriated for any fiscal year, the multi-year contract terminates  
16 automatically on the earlier of:

17 (i) the last day of the fiscal year for which money last was  
18 appropriated; or

19 (ii) the date provided in the termination clause of the  
20 procurement contract.

21 (2) If the multi-year contract is terminated under this subsection, the  
22 unit shall reimburse the contractor for the reasonable value of any nonrecurring costs  
23 that were:

24 (i) incurred as a result of the multi-year contract; but

25 (ii) not amortized in the price of the supplies or services  
26 delivered under the multi-year contract.

27 (3) The cost of termination under this subsection may be paid from  
28 any appropriation available for that purpose.

29 (e) **[Each] EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,**  
30 **EACH** multi-year contract, including a lease of real property, shall include an  
31 automatic termination clause that:

1           (1)    is not inconsistent with the requirements of subsection (d) of this  
2 section; and

3           (2)    discharges both parties to the multi-year contract from future  
4 performance of that contract, but not from their existing obligations.

5           **(F) (1) ON THE RECOMMENDATION OF THE SECRETARY OF GENERAL**  
6 **SERVICES, THE BOARD MAY WAIVE THE REQUIREMENT TO INCLUDE AN**  
7 **AUTOMATIC TERMINATION CLAUSE UNDER SUBSECTION (E) OF THIS SECTION**  
8 **FOR A MULTI-YEAR CONTRACT TO PROCURE ENERGY GENERATED FROM A TIER**  
9 **1 RENEWABLE SOURCE OR A TIER 2 RENEWABLE SOURCE, AS DEFINED IN §**  
10 **7-701 OF THE PUBLIC UTILITY COMPANIES ARTICLE.**

11           **(2) IN DETERMINING WHETHER OR NOT TO GRANT A WAIVER**  
12 **UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD SHALL CONSIDER**  
13 **THE EFFECT OF IMPOSING THE TERMINATION CLAUSE REQUIREMENT UNDER**  
14 **SUBSECTION (E) OF THIS SECTION ON THE ABILITY OF THE ENERGY SUPPLIER**  
15 **TO OBTAIN FINANCING FOR THE RENEWABLE ENERGY GENERATION PROJECT**  
16 **THAT PRODUCES THE ENERGY THAT THE STATE IS CONTRACTING TO PROCURE.**

17           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2010.